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# In the Supreme Court of the United States

OCTOBER TERM, 1926

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No. —

UNITED STATES OF AMERICA, PETITIONER

v.

JAMES M. LEE, ALIAS JAMES M. LEACH

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## **PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT**

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the First Circuit entered in the above-entitled cause reversing the judgment of the District Court of the United States for the District of Massachusetts.

### **OPINIONS BELOW**

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals (R. 36) is reported in 14 F. (2d) 400.

### **JURISDICTION**

The judgment of the Circuit Court of Appeals was entered on August 17, 1926. (R. 44.) On

November 16, 1926, an order was signed by the Chief Justice of the United States extending for fifteen days the time for filing this petition. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938).

#### **QUESTIONS PRESENTED**

1. Have Coast Guard officers the right to visit, search, and seize an American vessel on the high seas beyond twelve miles from the coast of the United States when such officers have reasonable ground to believe that the persons on said vessel are engaged in a conspiracy to violate the liquor laws of the United States?
2. May evidence relating to such a seizure be lawfully admitted against the defendants, over their objection, in a criminal prosecution of the persons arrested on said vessel at the time of its seizure?

#### **STATUTE INVOLVED**

This case involves, chiefly, the legality of certain acts done by Coast Guard officers on the high seas beyond the territorial limits of the United States and more than four leagues from the coast of the United States. The Circuit Court of Appeals rests its decision largely upon the effect given by it to Section 581 of the Tariff Act of 1922 (c. 356, 42 Stat. 858, 979). That section reads:

**SEC. 581. *Boarding vessels.*—Officers of the customs or of the Coast Guard, and agents or other persons authorized by the Secretary of the Treasury, or appointed for that purpose in writing by a collector may at any time go on board of any vessel or vehicle at any place in the United States or within four leagues of the coast of the United States, without as well as within their respective districts, to examine the manifest and to inspect, search, and examine the vessel or vehicle, and every part thereof, and any person, trunk, or package on board, and to this end to hail and stop such vessel or vehicle, if under way, and use all necessary force to compel compliance, and if it shall appear that any breach or violation of the laws of the United States has been committed, whereby or in consequence of which such vessel or vehicle, or the merchandise, or any part thereof, on board of or imported by such vessel or vehicle is liable to forfeiture, it shall be the duty of such officer to make seizure of the same, and to arrest, or, in case of escape or attempted escape, to pursue and arrest any person engaged in such breach or violation.**

Officers of the Department of Commerce and other persons authorized by such department may go on board of any vessel at any place in the United States or within four leagues of the coast of the United States and hail, stop, and board such vessels in the enforcement of the navigation laws and ar-

rest or, in case of escape or attempted escape, pursue and arrest any person engaged in the breach or violation of the navigation laws.

#### STATEMENT OF THE CASE

The respondent, James M. Lee, alias James M. Leach, was jointly indicted with Roderick McNeil and Leopold Vieria in the District Court of the United States for the District of Massachusetts for having conspired to import and bring into the United States intoxicating liquors in violation of the Tariff Act of 1922 and of the National Prohibition Act. The indictment alleged that the conspiracy was formed within the District of Massachusetts and charged at least one overt act as having been committed within that district. (R. 3-4.) No question as to the sufficiency of the indictment was raised at any stage of the proceedings.

At the trial, Boatswain A. J. Smalley of the Coast Guard testified for the Government that on February 16, 1925, while in command of a Coast Guard patrol boat, he observed the motor boat *D-683* proceeding eastwardly toward the high seas from Gloucester, Massachusetts; that he followed in the patrol boat several hundred yards in the rear of the *D-683* to a point on the high seas about 24 miles eastwardly of Boston Light, where he lost sight of said motor boat; that about an hour and a half later he discovered her, with a number of cans of alcohol on board, alongside the schooner

*L'Homme*, whereupon he arrested the defendants, Lee, McNeil, and Vieria, who were occupying the *D-683*, and took them, together with the boat and its load of liquor, into Boston. (R. 6.)

The Government also called as a witness Thomas F. Finnegan, Deputy Surveyor of Customs at Boston, who testified to certain incriminating statements made to him by the defendants upon their arrival in Boston in the custody of Boatswain Smalley regarding the circumstances under which they had gone out to the schooner. (R. 6-8.) Finnegan also testified that the cases found on the *D-683* contained grain alcohol, an intoxicating liquor within the meaning of the National Prohibition Act. He furthermore produced a record showing that the *D-683* was registered in the name of the defendant Lee, under the alias Leach. (R. 8, 20.) No evidence was offered by the defendants.

All the evidence relating to the search and seizure of the motor boat was admitted over the objection and subject to the exception of the defendants, who asserted that the search and seizure were unlawful because having taken place on the high seas at a point twenty-four miles from the nearest land. (R. 8-9.) The jury found the defendants Lee and McNeil guilty of the conspiracy charged, but acquitted Vieria. (R. 5.) From a sentence of four months' imprisonment (R. 5), Lee sued out a writ of error from the Circuit Court of Appeals for the First Circuit. That court reversed the judgment,

holding, in brief, that the District Court had erred in admitting the evidence regarding the seizure of the boat and its cargo, first, because that evidence was unlawfully obtained, as the Coast Guard had no authority to seize a vessel and its cargo on the high seas beyond twelve miles from the coast, and second, because the admission of that evidence, over the defendants' objection, was in violation of the defendants' rights under the Fourth Amendment. (R. 36-43.) The judgment of the District Court was accordingly reversed and the case ordered remanded to that court for further proceedings. (R. 44.)

In support of its conclusion that the search and seizure were unlawful, the Circuit Court of Appeals declared that at common law no general right to visit and search vessels beyond territorial waters existed in time of peace; that, therefore, to render the search and seizure in this case valid, authority to take that action must have been conferred by some Act of Congress; that Section 581 of the Tariff Act of 1922, *supra*, was the only statute which vested authority in the Coast Guard to board, search, and seize vessels beyond territorial waters, and that statute expressly limited the exercise of the authority it conferred to four leagues from the coast of the United States. In the course of its opinion, which was handed down on August 17, 1926, the court expressed its disagreement with the construction given Section 581 in the decision rendered July 7, 1926, by the Circuit Court of Appeals

for the Second Circuit in *The Underwriter*, 13 F. (2d) 433.

In *The Underwriter* case the Government sought to forfeit an American vessel on the ground, among others, that it had violated the conditions of its license. The District Court ordered the libel dismissed for the reasons that the vessel had been seized by Coast Guard officers about thirty-five miles from the coast of the United States; that the seizure was unlawful because in excess of the powers conferred upon the Coast Guard by Section 581 of the Tariff Act of 1922; and that an unlawful seizure could not be made the basis of jurisdiction in the court to decree a forfeiture. (6 F. (2d) 937.) The decree was reversed by the Circuit Court of Appeals for the Second Circuit, which held (1) that the seizure of the vessel was not unlawful; (2) that Section 581 was intended to give the Coast Guard authority to board, search, and seize foreign vessels coming within the twelve-mile limit, but was not intended as forbidding the search, seizure, or detention of American vessels beyond that limit; and (3) that the jurisdiction of a court to decree the forfeiture of a vessel is in no way affected by the manner in which the vessel came into the possession of the Government.

It manifest, therefore, that there is a direct conflict of decision between the First and Second Circuit Courts of Appeals as to the right of Coast Guard officers to make searches and seizures of

American vessels on the high seas beyond twelve miles from the coast of the United States.

**SPECIFICATION OF ERRORS TO BE URGED**

1. The Circuit Court of Appeals erred in holding that United States Coast Guard officers have no authority to visit, search, and seize American vessels on the high seas beyond four leagues from the coast of the United States where such officers have reasonable cause for belief that such vessels are engaged in violating a law of the United States.

2. The Circuit Court of Appeals erred in holding that evidence obtained as the result of such a visitation, search, and seizure can not lawfully be admitted against the defendants, over their objection, in a criminal prosecution of the persons arrested on said vessel at the time of its seizure.

3. The Circuit Court of Appeals erred in vacating the judgment of the District Court and in setting aside the verdict rendered in this case.

**REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT**

The construction given Section 581 of the Tariff Act of 1922 by the Circuit Court of Appeals for the First Circuit is in direct conflict with the construction given that statute by the Circuit Court of Appeals for the Second Circuit in *The Underwriter case*.

A petition for a writ of certiorari has been granted in *The Underwriter case*, docketed in this

Court under the title *Arthur Maul, Petitioner, v. United States of America*, No. 655, which petition was not opposed by the Government. It is appropriate that this case should be before the Court at the same time.

In view of the considerations stated it is respectfully submitted that the petition for a writ of certiorari should be granted.

WILLIAM D. MITCHELL,

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MABEL WALKER WILLEBRANDT,

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ALEXANDER SIDNEY LANIER,

*Special Assistant to the Attorney General.*

NOVEMBER, 1926.